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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **ANN FOX, INDIVIDUALLY**
14 **AND ON BEHALF OF ALL**
15 **OTHERS SIMILARLY**
16 **SITUATED,**

17 Plaintiff,

18 v.

19 **AUS, INC.,**

20 Defendant.

21 **Case No.:**

22 **CLASS ACTION COMPLAINT FOR**
23 **DAMAGES**

24 **JURY TRIAL DEMANDED**

25 1. ANN FOX (“Plaintiff”) brings this Class Action Complaint for
26 damages, injunctive relief, and any other available legal or equitable remedies,
27 resulting from the illegal actions of AUS, INC. (“Defendant”), in negligently
28 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation
of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”),
thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal
knowledge as to herself and her own acts and experiences, and, as to all other
matters, upon information and belief, including investigation conducted by his
attorneys.

29 2. The TCPA was designed to prevent calls and text messages like the

1 ones described herein, and to protect the privacy of citizens like Plaintiff.
 2 “Voluminous consumer complaints about abuses of telephone technology – for
 3 example, computerized calls dispatched to private homes – prompted Congress to
 4 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

5 3. In enacting the TCPA, Congress intended to give consumers a choice
 6 as to how corporate similar entities may contact them, and made specific findings
 7 that “[t]echnologies that might allow consumers to avoid receiving such calls are
 8 not universally available, are costly, are unlikely to be enforced, or place an
 9 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
 10 support of this, Congress found that

11 [...]anning such automated or prerecorded telephone
 12 calls to the home, except when the receiving party
 13 consents to receiving the call or when such calls are
 14 necessary in an emergency situation affecting the health
 15 and safety of the consumer, is the only effective means
 16 of protecting telephone consumers from this nuisance
 17 and privacy invasion.

18 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
 19 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
 20 TCPA’s purpose).

21 4. Congress also specifically found that “the evidence presented to the
 22 Congress indicates that automated or prerecorded calls are a nuisance and an
 23 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
 24 *Mims*, 132 S. Ct. at 744.

25 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
 26 TCPA case regarding calls to a non-debtor similar to this one:

27 The Telephone Consumer Protection Act ... is well
 28 known for its provisions limiting junk-fax

1 transmissions. A less-litigated part of the Act curtails
2 the use of automated dialers and prerecorded messages
3 to cell phones, whose subscribers often are billed by the
4 minute as soon as the call is answered—and routing a
5 call to voicemail counts as answering the call. An
6 automated call to a landline phone can be an
7 annoyance; an automated call to a cell phone adds
8 expense to annoyance.

9 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

10 6. This Court has federal question jurisdiction because this case arises
11 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
12 *LLC*, 132 S. Ct. 740 (2012).

13 7. Venue is proper in the United States District Court for the Central
14 District of California pursuant to 18 U.S.C. § 1391(b)(2) and 1441(a) because
15 Defendant is subject to personal jurisdiction in the County of Santa Barbara, State
16 of California as Plaintiff is a resident of Santa Barbara County, State of California
17 and Plaintiff received the calls at issue within this judicial district.

PARTIES

18 8. Plaintiff is, and at all times mentioned herein was, a citizen and
19 resident of the State of California. Plaintiff is, and at all times mentioned herein
20 was, a “person” as defined by 47 U.S.C. § 153 (10).

21 9. Plaintiff is informed and believes, and thereon alleges, that
22 Defendant is, and at all times mentioned herein was, a corporation whose
23 principal place of business and state of incorporation is in the State of New
24 Jersey. Defendant, is and at all times mentioned herein was, a corporation and is
25 a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff alleges that at all times
26
27

1 relevant herein Defendant conducted business in the State of California and in the
2 County of Santa Barbara, and within this judicial district.

3 **FACTUAL ALLEGATIONS**

4 10. At all times relevant, Plaintiff was a citizen of the State of California.
5 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
6 U.S.C. § 153 (10).

7 11. Defendant is, and at all times mentioned herein was, a corporation
8 and a “person,” as defined by 47 U.S.C. § 153 (10).

9 12. At all times relevant Defendant conducted business in the State of
10 California and in the County of Santa Barbara, within this judicial district.

11 13. On or about October 5, 2013, Defendant placed its calls to Plaintiff’s
12 cellular telephone from the following telephone number: (702)-359-5518.

14 14. The calls Defendant placed to Plaintiff’s cellular telephone were
15 placed via an “automatic telephone dialing system,” (“ATDS”) as defined by 47
16 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

17 15. This ATDS has the capacity to store or produce telephone numbers
18 to be dialed, using a random or sequential number generator.

19 16. The telephone number that Defendant, or its agents, called was
20 assigned to a cellular telephone service for which Plaintiff incurs a charge for
21 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

22 17. These telephone calls constituted calls that were not for emergency
23 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

24 18. Plaintiff is not a customer of Defendant. Plaintiff did not provide her
25 cellular telephone number to Defendant for any purpose whatsoever. Thus, at no
26 time did Plaintiff provide Defendant or its agents with prior express consent to
27 receive telephone calls from an ATDS pursuant to 47 U.S.C. § 227 (b)(1)(A).
28

1 19. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
2 § 227(b)(1).

3 **CLASS ACTION ALLEGATIONS**

4 20. Plaintiff brings this action on behalf of herself and on behalf of and
5 all others similarly situated (“the Class”).

6 21. Plaintiff represents, and is a member of, the Class, consisting of: All
7 persons within the United States who received any telephone call/s from
8 Defendant or its agent/s and/or employee/s to said person’s cellular telephone
9 made through the use of any automatic telephone dialing system or with an
10 artificial or prerecorded voice within the four years prior to the filling of the
11 Complaint.

12 22. Defendant and its employees or agents are excluded from the Class.
13 Plaintiff does not know the number of members in the Class, but believes the
14 Class members number in the thousands, if not more. Thus, this matter should be
15 certified as a Class action to assist in the expeditious litigation of this matter.

16 23. Plaintiff and members of the Class were harmed by the acts of
17 Defendant in at least the following ways: Defendant, either directly or through its
18 agents, illegally contacted Plaintiff and the Class members via their cellular
19 telephones, thereby causing Plaintiff and the Class members to incur certain
20 cellular telephone charges or reduce cellular telephone time for which Plaintiff
21 and the Class members previously paid, and invading the privacy of said Plaintiff
22 and the Class members. Plaintiff and the Class members were damaged thereby.

23 24. This suit seeks only damages and injunctive relief for recovery of
24 economic injury on behalf of the Class, and it expressly is not intended to request
25 any recovery for personal injury and claims related thereto. Plaintiff reserves the
26 right to expand the Class definition to seek recovery on behalf of additional
27 persons as warranted as facts are learned in further investigation and discovery.

1 25. The joinder of the Class members is impractical and the disposition
2 of their claims in the Class action will provide substantial benefits both to the
3 parties and to the court. The Class can be identified through Defendant's records
4 or Defendant's agents' records.

5 26. There is a well-defined community of interest in the questions of law
6 and fact involved affecting the parties to be represented. The questions of law
7 and fact to the Class predominate over questions which may affect individual
8 Class members, including the following:

- 9 a) Whether, within the four years prior to the filing of this Complaint,
10 Defendant or its agents placed any calls to the Class (other than a
11 call made for emergency purposes or made with the prior express
12 consent of the called party) to a Class member using any automatic
13 dialing system and/or an artificial or prerecorded voice to any
14 telephone number assigned to a cellular phone service;
- 15 b) Whether Plaintiff and the Class members were damaged thereby, and
16 the extent of damages for such violation; and
- 17 c) Whether Defendant and its agents should be enjoined from engaging
18 in such conduct in the future.

20 27. As a person that received numerous calls from Defendant via an
21 automated telephone dialing system and/or an artificial or prerecorded voice,
22 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and
23 adequately represent and protect the interests of the Class in that Plaintiff has no
24 interests antagonistic to any member of the Class.

25 28. Plaintiff and the members of the Class have all suffered irreparable
26 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a
27 class action, the Class will continue to face the potential for irreparable harm. In
28 addition, these violations of law will be allowed to proceed without remedy and

1 Defendant will likely continue such illegal conduct. Because of the size of the
2 individual Class member's claims, few, if any, Class members could afford to
3 seek legal redress for the wrongs complained of herein.

4 29. Plaintiff has retained counsel experienced in handling class action
5 claims and claims involving violations of the Telephone Consumer Protection
6 Act.

7 30. A class action is a superior method for the fair and efficient
8 adjudication of this controversy. Class-wide damages are essential to induce
9 Defendant to comply with federal and California law. The interest of Class
10 members in individually controlling the prosecution of separate claims against
11 Defendant is small because the maximum statutory damages in an individual
12 action for violation of privacy are minimal. Management of these claims is likely
13 to present significantly fewer difficulties than those presented in many class
14 claims.

15 31. Defendant has acted on grounds generally applicable to the Class,
16 thereby making appropriate final injunctive relief and corresponding declaratory
17 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**
20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
21 **PROTECTION ACT**
22 **47 U.S.C. § 227 ET SEQ.**

23 32. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

24 33. The foregoing acts and omissions of Defendant constitute numerous
25 and multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

34. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

35. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

38. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

39. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

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1 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
2 **TCPA, 47 U.S.C. § 227 ET SEQ.**

3 40. As a result of Defendant's negligent violations of 47 U.S.C. §
4 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory
5 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

6 41. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
7 such conduct in the future.

8 42. Any other relief the Court may deem just and proper.

9 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
10 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

11 43. As a result of Defendant's knowing and/or willful violations of 47
12 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00
13 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
14 227(b)(3)(C).

15 44. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
16 such conduct in the future.

17 45. Any other relief the Court may deem just and proper.

18 **TRIAL BY JURY**

19 46. Pursuant to the seventh amendment to the Constitution of the United
20 States of America, Plaintiffs are entitled to, and demand, a trial by jury.

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2 Respectfully submitted this April 7, 2014.
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LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Attorney for Plaintiff